

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
cr
SPECIAL CIVIL APPLICATION No 53 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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KD DHILAVALA

Versus

DEHOD MERCANTILE CO. OP. BANK LTD.

Appearance:

No one appears for the petitioner even in the second round.

MR MR ANAND, senior counsel with Mr. Raval
for Respondent No. 1

MR HJ NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/07/97

ORAL JUDGEMENT

Petitioner was appointed as General Manager with the respondent-Bank vide order dated 29.5.93 by direct recruitment. Aggrieved from this appointment by direct recruitment, respondent No.2 i.e. Gujarat Banks Workers Union preferred an application complaining of breach of settlement before Labour Court, Godhra being BIR Application No.1/93 on the ground that in view of the settlement, which had been arrived at between the respondent - Bank and the workers Union, no appointment could be made by direct recruitment even on the post of General Manager. In this application for breach of settlement, the Labour Court, Godhra passed an order on 2.9.93 below Exh.4, for temporary injunction, rejecting

the request for grant of temporary injunction. However, in BIR Application No.6/94 an order was passed on 19.11.94 by the Labour Court, Godhra that in view of the settlement arrived at between the Union and the Bank, the Bank is directed to make appointment against any post including any newly created post by taking into consideration the educational qualifications and the efficiency of the employees working in the Bank. The present petitioner was not a party to the proceedings under the BIR Act in which the aforesaid orders were passed. Thereafter, on the basis of the order dated 19.11.94 passed in BIR Application No.6/94 the petitioner's appointment as General Manager was set aside and the petitioner was removed from service on 2.12.94. Aggrieved from the order dated 2.12.94 read with the order dated 19.11.94, as aforesaid, the petitioner has preferred this Special Civil Application seeking a mandatory direction against the Bank that he may be allowed to continue in service.

The settlement has not been placed on record. The order dated 29.5.93 by which the petitioner was appointed in the respondent - Bank shows that he had been appointed in the Pay scale of Rs. 6355-8540 as General Manager. The petitioner is not a workman. The respondent - Bank is a Mercantile Co-Operative Bank Ltd. It is of course true that the petitioner is not bound by the orders, which were passed in the proceedings under BIR Act at the instance of the Bank Workers Union by the Labour Court, Godhra, to which he was not even a party. But the petition against termination of petitioner's appointment vide order dated 2.12.94 cannot be entertained in such matters. If there is a breach of any contractual terms of employment by the respondent - Bank against the petitioner, it is always open for the petitioner to file a proper Civil Suit claiming damages for unlawful termination. The petitioner did not hold any appointment of status under the law. It is pure and simple case of a contractual employment in the respondent - Mercantile Co-Operative Bank Ltd. The petitioner is, therefore, not entitled to the relief of reinstatement.

It is, therefore, left open for the petitioner to challenge the termination order dated 2.12.94 for the purpose of claiming appropriate damages, if any, from the respondent - Bank in accordance with law with a clarification that the order passed by the Labour Court, Godhra in the proceedings under BIR Act will not come in his way, in case he chooses to file Civil Suit claiming damages. However, in these proceedings, no relief can be granted to the petitioner and, therefore, the petitioner

may avail the remedy available to him under the common law.

For the aforesaid reasons, this Special Civil Application is hereby dismissed and the Rule is hereby discharged. Interim order dated 9.1.95 already stands vacated. No order as to costs.

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